THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14988 OF 2005

Dated: 7th November, 2005.

Between:

Pantam Prabhakar Rao … Petitioner

And

1. The Collector (CS), Kakinada, E.G. District.
2. The Revenue Divisional Officer, Kakinada,
   E.G. District.
3. The Mandal Revenue Officer, Gollaprolu Village and Mandal, E.G. District.
4. Smt. Balireddy Naga Venkata Lakshmi … Respondents

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ORDER :

The writ petitioner was appointed as a fair price shop dealer of Gollaprolu village

and Mandal on regular basis. On 23-12-2000 the 3rd respondent - Mandal Revenue Officer, Gollaprolu inspected the petitioner's shop and submitted a report dated 25-12-2000 to the 2nd respondent – Revenue Divisional Officer, Kakinada, which revealed certain variations in the stock available in the fair price shop. On the basis of the said report, the 2nd respondent – Revenue Divisional Officer, Kakinada by order dated 22-01-2001 suspended the authorization of the petitioner pending enquiry. Subsequently, the petitioner was issued a show-cause notice dated 14-2-2001 calling upon him to show-cause as to why his authorization should not be cancelled. The petitioner submitted his explanation denying the allegations of variation in the stock and explaining the circumstances under which he could not be present on the date of inspection. Having considered the same, the second respondent by order dated 6-5-2003 imposed penalty of Rs.1,000/- and restored the authorization of the writ petitioner. In pursuance of the said order, the petitioner paid penalty and consequently his authorization was restored and he is continuing as dealer as on today. However, the fourth respondent – Smt. Balireddy Naga Venkata Lakshmi who was appointed as a temporary dealer during the period of suspension of authorization of the petitioner, filed an appeal before the first respondent – The Collector (CS), Kakinada questioning the order of the 2nd respondent dated 6-5-2003 on various grounds. In the said appeal, the writ petitioner filed a detailed counter contending inter alia that the appellant / 4th respondent herein had no locus standi to prefer an appeal. It appears that the first respondent while disposing of the appeal issued proceedings dated 15-2-2005 directing the 2nd respondent - Revenue Divisional Officer to dispose of the case within 30 days on the basis of the representation dated 20-12-2003 made by the dealer (writ petitioner) and take necessary action. In pursuance thereof a fresh show-cause notice was issued to the writ petitioner on 16-5-2005 to which the petitioner submitted his explanation. Thereafter, the second respondent passed an order dated 21-6-2005 cancelling the authorization of the petitioner holding that the petitioner was not distributing P.D.S. Commodities to the card holders fairly. Aggrieved by the said action of the respondents, this writ petition is filed with the following prayer :

> *"It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in passing an order in proceedings No.Ref.V10/CS/507/2003, dated 15-2-2005 and the consequential order of 2nd respondent passed in Ref.G./982/03,*

dated 21-6-2005 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently set aside the said proceedings with a direction to the respondents 1 to 3 to restore the authorization of the petitioner as a fair price shop dealer in the interests of justice and pass such other order or orders which this Hon'ble Court may deem fit and proper under facts and circumstances of the case.

It is further prayed that this Hon'ble Court may be pleased to suspend the operation of the impugned proceeding No.Ref.G/982/03, dated 21-6-2005, issued by the respondent No.2 pending disposal of above writ petition and pass such other order or orders which are necessary in the interest of justice."

The learned Counsel for the petitioner submits that in spite of the fact that the petitioner filed a detailed counter specifically contending that the appeal itself was not maintainable by the temporary dealer, the first respondent, without considering the objection, disposed of the appeal remanding the matter back to the 2nd respondent - Revenue Divisional Officer. The learned Counsel also submits that as a matter of fact the order said to have been passed by the first respondent in the Appeal was never communicated to the writ petitioner and therefore there was no opportunity to him to challenge the said order till the fresh show-cause notice was served on him in the month of May, 2005.

On the other hand, the learned Counsel appearing for the fourth respondent submits that against the impugned order dated 21-6-2005 an efficacious alternative remedy of appeal is available under the statute and therefore the writ petition cannot be maintained without exhausting the said alternative remedy.

The learned Government Pleader has produced the relevant record which shows that the order said to have been passed by the first respondent in the appeal filed by the fourth respondent was not communicated to the petitioner. As a matter of fact, the record reveals that the first petitioner had addressed only a letter dated 15-2-2005 to the second respondent directing him to reconsider the matter taking into consideration the objections raised by the dealer (writ petitioner herein) in the Appeal by way of representation dated 6-5-2003 and take necessary action.

Having considered the entire material on record and particularly in view of the admitted fact that the writ petitioner was not heard by the 1st respondent, I am of the opinion that the letter of the first respondent dated 15-2-2005 cannot be treated as an order in the statutory appeal. The order of the 1st respondent being illegal and violative of the principles of natural justice was ex facie bad and liable to be set aside. Consequently, the action of the 2nd respondent in issuing a fresh show-cause notice and the consequential order of cancellation dated 21-6-2005 are also liable to be declared as arbitrary and illegal.

Accordingly, the order of the 1st respondent dated 15-2-2005 as well as consequential proceedings including the order of the 2nd respondent dated 21-6-2005 are set aside and the first respondent is directed to reconsider the appeal preferred by the fourth respondent against the order of the 2nd respondent dated 6-5-2003 and to pass appropriate orders afresh in accordance with law. It is made clear that the first respondent shall issue notice of hearing to both the writ petitioner as well as the fourth respondent and afford them an opportunity to produce the necessary material in support of their respective claims. The appeal shall be heard and decided in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

Keeping in view the fact that as of today the writ petitioner is continuing by virtue of the interim orders of this Court, I deem it appropriate to direct the respondents 1 to 3 to continue the petitioner as fair price shop dealer of the shop in question till the appeal is decided by the first respondent.

With the above directions, the Writ Petition is disposed of. No costs.

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7th November, 2005.

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